IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.58 of 1995

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX
Versus
SARDAR VALLABHBHAI PATEL KHAND UDYOG SAHAKARI MANDLI LTD

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 08/12/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'A', has referred the following question

under Section 256(1) of the Income-tax Act, 1961 (the Act), at the instance of the Commissioner of Income-tax:

> "Whether, the Appellate Tribunal is right in law and on facts in deleting the disallowance of Rs.11,96,005/- being non-refundable deposit recovered from the members ?"

2. The Assessment Year is year 1982-83 and the relevant accounting year is Samvant Year 2037. While framing assessment under Section 143(3) of the Act, the Assessing Officer noted that sugarcane purchase account showed total purchases at Rs.1,91,31,244/-. That the said account showed a debit of a sum of Rs.11,96,005/- towards members compulsory savings at the rate of Rs.10/- per tonne which was non-refundable. The Assessing Officer, therefore, came to the conclusion that the aforesaid sum which formed part of purchase price was disallowable as it was nothing but a device to show inflated purchase price. In the process he did not accept the fact that in the past the same basis had been adopted for recording purchases.

3. When the matter was carried before the Commissioner (Appeals), on behalf of the assessee it was submitted that under Clause-34 of the bye-laws of the assessee-society the amount which was collected from the members was adjusted towards the share money of the members or repayment of loans from financial institutions. It was further submitted that at the time when a member of the Society resigned from the society the sum so deposited to his account was collected from the incoming member and the credit balance was transferred in favour of the incoming member of the society. Therefore, according to the assessee, the amount was merely a deposit and could not be treated as trading receipt taxable in hands of the assessee-society. Alternatively, it was contended that the price paid for sugarcane purchases was an allowable deduction and no part thereof could have been disallowed. The Commissioner (Appeals), following the decision of the Apex Court in the case of Commissioner of Income-tax, U.P.-II Vs. Bazpur Co-operative Sugar Factory Ltd., [1988] 172 ITR

321 (S.C.), held that the amount in question was trading receipt and was liable to be treated as such. Therefore, question of allowing deduction of the same obviously could not arise.

4. The assessee carried the matter in appeal before the Tribunal. The Tribunal placed reliance on Clause 34 of the bye-laws and referred to the decision of the Special Bench of the Tribunal at Poona in the case of Chhatraptai Sahakari Sakhar Karkhana Ltd. Vs. Dy. Commissioner of Income-tax, [1992] 40 ITD 117 and came to the conclusion that the amount of deposit had to be allowed as a deduction.

5. Mr.T.U.Bhatt, learned Standing Counsel appearing on behalf of the applicant-revenue, has invited attention to the decision rendered by the Bombay High Court in the case of Commissioner of Income-tax Vs. Chhatrapati Sahakari Sakhar Karkhana Ltd., [2000] 245 ITR 498 to submit that the decision of the Special Bench of the Tribunal, on which reliance was placed by the Tribunal in the

impugned order, has since been reversed by the Bombay High Court and, therefore, the impugned order of the Tribunal be reversed.

6. Though served, there is no appearance on behalf of the respondent-assessee.

7. As can be seen from the facts on record the Assessing Officer, in the first instance, had disallowed a part of the purchase price by treating the same as inflated purchase price. The Assessing Officer had never treated the said sum as trading receipt in hands of the assessee. This was the view adopted by the Commissioner (Appeals). In the impugned order the Tribunal has, while holding that the deposit is not taxable, held that the same should be allowed as a deduction. It is necessary to note that the assessee had at no stage claimed that the deposit be allowed as a deduction.

8. Apart from the above, as can be seen from the Bombay High Court judgment in the case of

Commissioner of Income-tax Vs. Chhatrapati Sahakari Sakhar Karkhana Ltd. (supra) the High Court itself has opined that, in a matter of this type there cannot be any straitjacket formula, and it will depend on the facts of each case. In the case before the Bombay High Court, it has taken note of various bye-laws as well as the accounting entries to come to the conclusion that in absence of any separate fund for such deposits the deposits were trading receipt in substance. It is not necessary to set out in detail various factual aspects which weighed with the Bombay High Court while arriving at the decision. Suffice it to state that in the present case the impugned order of the Tribunal does not give any indication as to what were the facts i.e. what were the correct and complete facts.

9. In these circumstances, it would not be proper to reverse the impugned order of the Tribunal only on the basis that decision of the Special Bench of the Tribunal has since been reversed. Therefore, the question is left unanswered. It

would be open to the Tribunal to permit both the sides to lead additional evidence, if necessary, before finally disposing of the appeal.

10. Accordingly, the question is left unanswered and the reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**